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HOUSE BILL 416

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO THE EXTRATERRITORIAL POWERS OF MUNICIPALITIES;
RESTORING POWERS TO MUNICIPALITIES IN CLASS A COUNTIES WITH
MORE THAN THREE HUNDRED THOUSAND PERSONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 3-7-3 NMSA 1978 (being Laws 1965,
Chapter 300, Section 14-7-3, as amended) is amended to read:

"3-7-3. LIMITATION ON ANNEXATION.--No municipality may
annex territory within the boundary of another municipality [~~or~~
~~territory within a class A county with a population of more~~
~~than three hundred thousand persons unless approved by the~~
~~board of county commissioners for that county]."~~

Section 2. Section 3-7-17.1 NMSA 1978 (being Laws 1998,
Chapter 42, Section 2, as amended) is amended to read:

"3-7-17.1. ANNEXATION--CERTAIN MUNICIPALITIES IN CLASS A

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1 COUNTIES--PROCEDURES--LIMITATIONS.--

2 A. A petition seeking the annexation of territory
3 contiguous to a municipality with a population of more than two
4 hundred thousand persons that is located in a class A county
5 [~~with a population of less than three hundred thousand persons~~]
6 shall be presented to the city council and be accompanied by a
7 map that shows the external boundary of the territory proposed
8 to be annexed and the relationship of the territory proposed to
9 be annexed to the existing boundary of the municipality.

10 B. If the petition is signed by the owners of a
11 majority of the number of acres in the contiguous territory:

12 (1) the city council shall submit the petition
13 to the board of county commissioners of the county in which the
14 municipality is located for its review and comment. Any
15 comments shall be submitted by the board of county
16 commissioners to the city council within thirty days of
17 receipt; and

18 (2) not less than thirty days nor more than
19 sixty days after receiving the petition, the city council shall
20 by ordinance approve or disapprove the annexation after
21 considering any comments submitted by the board of county
22 commissioners.

23 C. Except as provided in Subsection D of this
24 section, if the petition is not signed by the owners of a
25 majority of the number of acres in the contiguous territory,

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1 the extraterritorial land use commission shall consider the
2 matter and make a recommendation to the extraterritorial land
3 use authority. The extraterritorial land use authority shall
4 approve or disapprove the petition. If approved by the
5 extraterritorial land use authority, the city council may by
6 ordinance approve the annexation.

7 D. When the nonconsenting property owners'
8 properties are entirely surrounded by consenting property
9 owners, the city council may approve the annexation without
10 approval or disapproval of the extraterritorial land use
11 authority.

12 E. In considering an annexation pursuant to this
13 section, the city council shall consider the impact of the
14 annexation on existing county contracts and provisions of
15 services, including fire protection, solid waste collection or
16 water and sewer service, and may make agreements with the
17 county to continue such services if it is in the interest of
18 the county, the residents of the proposed annexed area or the
19 municipality.

20 F. A municipality with a population [~~over~~] of more
21 than two hundred thousand persons [~~and~~] that is located in a
22 class A county shall not force a resident or business located
23 in the unincorporated area of the county to agree to annexation
24 as a condition of extending sewer and water service to that
25 [~~person~~] resident or business, if that sewer or water service

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1 extension is paid for all or in part by federal, state or
2 county money. The municipality may make agreement to
3 annexation a condition of extending sewer and water service if
4 the extension of the service is paid for entirely with
5 municipal money."

6 Section 3. Section 3-19-5 NMSA 1978 (being Laws 1965,
7 Chapter 300, Section 14-18-5, as amended) is amended to read:

8 "3-19-5. PLANNING AND PLATTING JURISDICTION.--

9 A. Each municipality shall have planning and
10 platting jurisdiction within its municipal boundary. Except as
11 provided in Subsection B of this section, the planning and
12 platting jurisdiction of a municipality:

13 (1) having a population of twenty-five
14 thousand or more persons includes all territory within five
15 miles of its boundary and not within the boundary of another
16 municipality; or

17 (2) having a population of fewer than
18 twenty-five thousand persons includes all territory within
19 three miles of its boundary and not within the boundary of
20 another municipality.

21 B. A municipality having a population of more than
22 two hundred thousand persons that is located in a class A
23 county [~~with a population of more than three hundred thousand~~
24 ~~persons~~] shall [~~not~~] have planning and platting jurisdiction
25 [~~in the unincorporated area of the county~~] within five miles of

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1 the boundary of the municipality shared with the county and not
2 within the boundary of another municipality through the
3 extraterritorial land use commission that shall make
4 recommendations to the extraterritorial land use authority.

5 C. If territory not lying within the boundary of a
6 municipality is within the planning and platting jurisdiction
7 of more than one municipality, the planning and platting
8 jurisdiction of each municipality shall terminate equidistant
9 from the boundary of each municipality unless one municipality
10 has a population of fewer than two thousand five hundred
11 persons and another municipality has a population of more than
12 two thousand five hundred persons according to the most recent
13 census. Then the planning and platting jurisdiction of the
14 municipality having the greatest population extends to such
15 territory."

16 Section 4. Section 3-21-2 NMSA 1978 (being Laws 1965,
17 Chapter 300, Section 14-20-2, as amended) is amended to read:

18 "3-21-2. JURISDICTION OF A COUNTY OR MUNICIPAL ZONING
19 AUTHORITY.--To carry out the purposes of Sections 3-21-1
20 through 3-21-14 NMSA 1978:

21 A. a county zoning authority may adopt a zoning
22 ordinance applicable to all or any portion of the territory
23 within the county that is not within the zoning jurisdiction of
24 a municipality;

25 B. except as otherwise provided in Subsections C

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1 and D of this section, a municipal zoning authority may adopt a
2 zoning ordinance applicable to the territory within the
3 municipal boundaries and [~~if not within a class A county with a~~
4 ~~population of more than three hundred thousand persons~~
5 ~~according to the last federal decennial census~~] shall have
6 concurrent authority with the county to zone all or any portion
7 of the territory within its extraterritorial zoning
8 jurisdiction that is within:

9 (1) three miles of the boundary of any
10 municipality having a population of two hundred thousand or
11 more persons; provided that such territory is not within the
12 boundary of another municipality;

13 (2) two miles of the boundary of any
14 municipality having a population of twenty thousand or more
15 persons; provided such territory is not within the boundary of
16 another municipality;

17 [~~2~~] (3) one mile of the boundary of any
18 municipality having a population of one thousand five hundred
19 or more but less than twenty thousand persons; provided such
20 territory is not within the boundaries of another municipality;

21 [~~3~~] (4) the limits of the boundaries of a
22 municipality having a population of one thousand five hundred
23 persons or less; or

24 (5) territory that is in addition to the
25 extraterritorial zoning jurisdiction provided by Paragraphs (1)

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1 through (4) of this subsection that the governing bodies of a
2 county and a municipality agree to place within the
3 extraterritorial zoning jurisdiction of the municipality by
4 agreement entered into pursuant to the provisions of the Joint
5 Powers Agreements Act; provided that such additional territory
6 is not within the boundary of another municipality and is
7 contiguous to the exterior boundaries of the territory within
8 the extraterritorial zoning jurisdiction of the municipality;

9 ~~[(4)]~~ C. for territory that is not lying within the
10 boundary of a municipality but within the extraterritorial
11 jurisdiction of more than one municipality, ~~[provided that]~~ the
12 extraterritorial zoning jurisdiction of each municipality shall
13 terminate equidistant from the boundary of each municipality
14 unless one municipality has a population according to the most
15 recent federal decennial census of ~~[less]~~ fewer than two
16 thousand five hundred and another municipality has a population
17 according to the most recent federal decennial census of more
18 than two thousand five hundred, in which case the
19 extraterritorial zoning jurisdiction of the municipality having
20 the greatest population extends to such territory; ~~[and~~

21 ~~(5) territory in addition to the~~
22 ~~extraterritorial zoning jurisdiction provided by Paragraphs~~
23 ~~(1), (2), (3) and (4) of this subsection that the governing~~
24 ~~bodies of a county and a municipality agree to place within the~~
25 ~~extraterritorial zoning jurisdiction of the municipality by~~

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1 ~~agreement entered into pursuant to the provisions of the Joint~~
2 ~~Powers Agreements Act, provided such additional territory is~~
3 ~~not within the boundary of another municipality and is~~
4 ~~contiguous to the exterior boundaries of the territory within~~
5 ~~the extraterritorial zoning jurisdiction of the municipality;~~

6 G.] D. concurrent authority shall be exercised
7 pursuant to an extraterritorial zoning authority or joint
8 powers agreement; provided, however, that this authority may be
9 exercised regardless of whether a county has enacted a
10 comprehensive zoning ordinance; and

11 [~~D.~~] E. in the absence of a county zoning
12 ordinance, a qualified elector may file a petition, signed by
13 the qualified electors of the county equal in number to not
14 less than twenty-five percent of the votes cast for the office
15 of governor at the last preceding general election, seeking the
16 adoption of a zoning ordinance by the county zoning authority.
17 Within one year of the filing of the petition seeking the
18 adoption of a county zoning ordinance, the board of county
19 commissioners shall adopt a county zoning ordinance."

20 Section 5. Section 3-21-3.2 NMSA 1978 (being Laws 1998,
21 Chapter 42, Section 5, as amended) is amended to read:

22 "3-21-3.2. EXTRATERRITORIAL ZONING IN CLASS A
23 COUNTIES--PROCEDURES.--

24 A. In a class A county in which a municipality is
25 located that has a population of:

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1 (1) more than three hundred thousand persons
2 [~~according to the last federal decennial census, there shall be~~
3 ~~no extraterritorial zoning~~], concurrent extraterritorial zoning
4 jurisdictions between that municipality and the county shall be
5 determined by an "extraterritorial land use authority". The
6 extraterritorial land use authority shall have the jurisdiction
7 and powers of an extraterritorial zoning authority and shall
8 carry out its duties related to planning and platting
9 jurisdiction, extraterritorial zoning, subdivision approval and
10 annexation approval or disapproval as provided in the Municipal
11 Code. The extraterritorial land use authority shall consist of
12 four county commissioners, appointed by the board of county
13 commissioners, and three city councilors, or two city
14 councilors and the mayor, appointed by the municipality.
15 Alternates to the extraterritorial land use authority shall be
16 appointed by the board of county commissioners from among the
17 remaining county commissioners and by the municipality from
18 among the remaining city councilors. The alternates shall be
19 notified prior to a meeting of the extraterritorial land use
20 authority if an appointed member cannot attend. When replacing
21 a member, an alternate shall have the same duties, privileges
22 and powers as the other appointed members; or

23 (2) three hundred thousand or fewer people,
24 concurrent extraterritorial zoning jurisdiction between that
25 municipality and the county may be determined by an

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1 "extraterritorial land use authority" pursuant to ordinances
2 adopted by the municipal and county governing bodies stating
3 that the county or municipality will create an extraterritorial
4 land use authority [~~The extraterritorial land use authority~~
5 ~~shall have the jurisdiction and powers of an extraterritorial~~
6 ~~zoning authority and shall carry out its duties related to~~
7 ~~planning and platting jurisdiction, extraterritorial zoning,~~
8 ~~subdivision approval and annexation approval or disapproval as~~
9 ~~provided in the Municipal Code. The extraterritorial land use~~
10 ~~authority shall consist of four county commissioners appointed~~
11 ~~by the board of county commissioners and three city councilors~~
12 ~~or two city councilors and the mayor appointed by the~~
13 ~~municipality. Alternates to the extraterritorial land use~~
14 ~~authority shall be appointed by the board of county~~
15 ~~commissioners from among the remaining county commissioners and~~
16 ~~by the municipality from among the remaining city councilors.~~
17 ~~The alternates shall be notified prior to a meeting of the~~
18 ~~extraterritorial land use authority if an appointed member~~
19 ~~cannot attend. When replacing a member, an alternate shall~~
20 ~~have the same duties, privileges and powers as other appointed~~
21 ~~members]~~ with the composition, jurisdiction and powers set
22 forth in Paragraph (1) of this subsection.

23 B. The extraterritorial zoning commission in a
24 class A county shall be known as the "extraterritorial land use
25 commission" if it is formed by:

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1 (1) a class A county and a municipality that
2 has a population of more than three hundred thousand persons
3 and that is located within a class A county; or

4 (2) a municipality and a class A county that
5 have adopted ordinances pursuant to Paragraph (2) of Subsection
6 A of this section stating that the county and municipality will
7 create an extraterritorial land use authority.

8 C. The extraterritorial zoning commission shall be
9 composed of five members of the county planning commission
10 appointed by the board of county commissioners and five members
11 of the environmental planning commission of the municipality
12 appointed by the city council. Alternates to the
13 extraterritorial land use commission shall be appointed by the
14 board of county commissioners from the remaining members of the
15 county planning commission and by the municipality from the
16 remaining members of the environmental planning commission, who
17 shall be notified prior to a meeting of the extraterritorial
18 land use commission if an appointed member cannot attend. When
19 replacing a member, the alternate shall have the same duties,
20 privileges and powers as other appointed members.

21 D. The composition of the extraterritorial land use
22 commission shall not affect the composition of any other
23 extraterritorial zoning commission that may be established in
24 that county with any other municipality.

25 E. The extraterritorial land use commission shall

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1 have the authority to carry out duties related to planning
2 and platting jurisdiction, subdivision and extraterritorial
3 zoning."

4 Section 6. EFFECTIVE DATE.--The effective date of the
5 provisions of this act is July 1, 2009.

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